WP(C) 3530/1999
BEFORE
HION'BLE MR. JUSTICE B.K.SHARMA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARU NACHAL PRADESH)

W.P. (C) NO.3530 OF 1999.
W.P. (C) NO.3541 OF 1999.

M/S Warren Tea Ltd.,
a Public Company Limited by
Shares, incorporated under the
Companies Act, 1956 and
having its registered office at
Deohall Tea Estate, P.O. Hoograjan
and having its place of business
amongst others at Deomalie/
Dheddaam Tea Estate.

- PETITIONER

- Versus -

1. State of Assam.

2. Additional Commissioner of Taxes, Assam, Guwahati.

3. Deputy Commissioner of Taxes (Appeal), Tinsukia.

4. Superintendent of Taxes, Doom Dooma

- RESPONDENTS

P R E S E N T
THE HON'BLE MR JUSTICE B.K. SHARMA.

For the petitioner - Mr. A.K. Goswami,
Ms B. Bora,
Advocates.

For the respondents - Mr. R. Dubey,
Advocate.

Date of hearing - 22.01.2007.

Date of judgment
and order - 19.02.2007.

JUDGMENT AND ORDER

These two writ petitions by and between the same parties involving the same facts and raising the same issues, have been heard together and are being disposed of by this common judgment and order.

2. The petitioner is a public limited company incorporated under the Compan

ies Act, 1956 having its registered office at Deohall Tea Estate in the district of Dibrugarh. The Company is engaged in the business of manufacture and cultivation of tea.

3. The dispute involved in both the writ petitions pertains to purported transfer of stock of tea to the Head Office by the petitioner as well as to its commissioned agent and the assessment made by the taxing department in this regard. The assessment period involved are the period ending 31.3.1991 and 30.9.1991. While the petitioner claims that such transfer of stock of tea to the Head Office as well as to its commissioned agent was supported by required document 'F' Forms, the taxing authority has finally held that such transfer of stock to the commissioned agent attracts liability to pay central sales tax.

4. The petitioner in both the writ petitions has indicated the particulars of the 'F' Forms which were allegedly submitted in respect of the transactions involved. The claim for tax exemption in respect of such transfer of stock was rejected by Superintendent of Taxes, Doomdooma (Respondent No.4) on the ground of being not in conformity with the nature of transaction envisaged under Section 6-A of the Central Sales Tax Act, 1956. Such rejection of exemption and the assessment thereof was made vide orders dated 28.10.1992.

5. Being aggrieved by such assessment orders passed by the Respondent No.4 under Section 17 (3) of the Assam Sales Tax Act, 1974 read with Section 9 (2) of the Act, the petitioner preferred appeal under Section 30 of the Act before the Deputy Commissioner of Taxes (Appeal), Tinsukia i.e. the Respondent No.3. The appeal was dismissed by order dated 14.5.1996.

6. Being aggrieved by such dismissal of the appeals, the petitioner preferred revision applications under Section 31 (2) of the Assam Sales Tax, 1947 before the Commissioner of Taxes, Assam, Guwahati. The revision applications were transferred to the Additional Commissioner of Taxes, Assam, Guwahati (Respondent No.2). By the impugned orders dated 8.6.1997, the revision applications have been partly allowed granting exemption of tax in respect of dispatch of tea to the Head Office of the petitioner by accepting the revised and corrected 'F. Forms. But in respect of such transfer of stock of tea to the commissioned agent, same has been held not to be within the purview of exemption as envisaged under Section 6-A of the Central Sales Tax, 1956. It is this part of the orders, which has been assailed in the writ petitions.

7. Referring to the provision of Section 6-A of the Central Sales Tax Act, 1956 and placing reliance on the following decisions of the Apex Court, Mr. A.K. Goswami, learned Sr. counsel assisted by Ms B. Bora, learned counsel representing the petitioner submitted that the finding recorded by the revisional authority in respect of the transaction involved being perverse and not based on record, is liable to be interferred with. The decisions on which Mr. Goswami has placed reliance, are as follows :-

1) (2004) 3 SCC 01 (Ashok Leyland Ltd. v. State of Tamil Nadu and another)

2) (1976) 2 SCC 44 (Balabhagas Hulaschand v. State of Orissa)

3) (1985) 4 SCC 173 (Sahntey Steel and Press Works Ltd. v. Commercial Tax Officer)

8. Mr. R. Dubey, learned counsel representing the respondents, countering the above argument of Mr. Goswami, learned counsel for the petitioner submitted that an enquiry as required to be carried out, was duly carried out before arriving at the finding recorded in the impugned orders. He also submitted that the disputed questions of fact cannot be gone into exercising writ jurisdiction and that there being alternative remedy against the impugned orders, the writ Court will be reluctant to interfere with the same. He has also placed reliance on certa

in decisions of the Apex Court as well as of this Court, which are as follows :-
1) (2005) 10 SCC 192 (Gail India Ltd. v. Sales Tax Officer, Gujarat)

2) (1992) Supp.2 SCC 312 (H.B. Gandhi v. M/S Gopinath and Sons)

3) AIR 1981 SC 1604 (South India Viscose Ltd. v. State of Tamil Nadu).

4) (2006) 1 GLT 14 (Eastern Agency & Ors. v. State of Assam)

9. I have given my anxious consideration to the submissions made by the learned counsel for the parties. I have also gone through the entire materials on record. The writ petitions were admitted way back in 1999 with the interim order to the effect that the petitioner would pay 50% of the tax assessed within one month from the date of the order (26.7.1999) and on payment of the same, the balance amount would remain suspended. Both the writ petitions are now almost 8 years old. Further, the kind of arguments which have been advanced by the learned counsel for the parties do not relate to any disputed questions of fact, but are confined to legality or otherwise of the impugned revisional orders passed by the Respondent No.2. In such a situation, I am not inclined to accept the submissions made by the learned counsel for the respondents that there being an alternative remedy and the writ petitions having raised the disputed questions of fact, they are liable to be dismissed.

10. While the tenor of arguments of Mr. Goswami, learned counsel for the petitioner is that in the impugned orders passed by the revisional authority, there is no finding as such that the petitioner's case is not within the purview of Section 6-A of the Central Sales Tax Act, 1956. On the other hand, Mr. Dubey, learned counsel for the respondents, referring to the counter affidavit filed by the respondents and in reference to Rule 4 (4) of the Central Sales Tax (Assam) Rules, 1957, submitted that in the kind of transactions involved in the present cases, it is required to furnish simultaneous information of the inter-State despatch of goods to the concerned Assessing Officer, but in the instant case, the petitioner failed to comply with the requirement of the said rule. As per the affidavit filed by the respondents, the title documents of the goods were retained by the consignor till the goods reached the consignment destination.

11. The revisional authority, noticing that the Superintendent of Taxes had directed the petitioner to submit corrected 'F' Forms and as the petitioner was late in doing so, the Superintendent of Taxes completed the assessments without taking into consideration the 'F' Forms and that the appellate authority also refused to accept the corrected 'F' Forms and the explanation furnished by the petitioner, observed that as per Rule 12 (7) of the Central Sales Tax Rules, such declaration can be accepted at any stage of appeal. Accordingly, the revisional authority accepted the corrected 'F' Forms and issued direction to the Superintendent of Taxes to give benefit to the petitioner of those forms. However, it was provided that while doing so, the petitioner might be required to revise his return etc. as the actual transfer as covered by 'F' Forms might differ with the transfer already declared in the return.

12. Dealing with the transfer of stock to the commissioned agent, the revisional authority found it difficult to accept that the date of delivery and the date of sale by the agents could be the same. It has been held that it could be possible only if on arrival of consignment of tea, the agent had endorsed the Railway Receipts in the name of buyers of tea without taking delivery by himself. It is with this finding the revisional authority has held that such transactions attracted liability to pay central sales tax. The revisional authority has drawn a presumption that the proforma must have been prepared and filled in by the Head Office itself to hoodwink the taxing authority to get illegal tax benefit. The revisional authority has also suspected the agency agreement to be an unilateral affair of the Head Office. Finally, it has been observed that in the imp

ugned order that, the petitioner could not explain those aspects of the matter i n its written submission and so also, during the course of hearing.

13. On a plain reading of the impugned revisional order, what is seen is tha t there is no whisper about the 'F' Forms submitted by the petitioner in respect of the transactions in question. Certain inference has been drawn towards fixi ng the liability of the petitioner without making detail discussions as to how s uch inferences could be possible in the given facts and circumstances.

14. There is no dispute that the petitioner had submitted the 'F' Forms in respect of the transactions in question and it is the case of the petitioner th at initial burden of proof in case of transfer of goods claimed otherwise than b y way of sale having been discharged by the petitioner by way of submitting the 'F' Forms, in case of doubting the same, the kind of satisfaction required to b e arrived at against such initial discharge of burden was to be arrived at only after making the enquiry in respect of the declaration furnished by a dealer. I n the impugned order, there is no discussion of 'F' Forms submitted by the petit ioner. In the case of Ashok Leyland Ltd. (supra), the Apex Court dealing with t he question of determination of stock transfer and the nature of presumption und er Section 6-A of the Central Sales Tax Act, 1956 observed thus :-

45. When the dealer furnishes the original of Form F to its assessing authority , an enquiry is required to be held. Such enquiry is held by the assessing autho rity himself. He may pass an order on such declaration before the assessment or along with the assessment. Once an order in terms of sub-section (2) of Sectio n 6-A of the Central Act is passed, the transactions involved therein would go o ut of the purview of the Central Act. In other words, in relation to such transa ctions, a finding is arrived at that they are not subjected to the provisions of the Central sales tax. It is not in dispute that thereunder no appeal is provid ed thereagainst.

47. By reason of sub-section (2) of Section 6-A, a legal fiction has been create d for the purpose of the said Act to the effect that transaction has occasioned otherwise than as a result of sale.

48. On an analysis of the aforementioned provisions, therefore, the following pr opositions of law emerge :

(i) The initial burden of proof is on the dealer to show that the movement h as occasioned by reason of transfer of such goods which is otherwise than by rea son of sale. The assessee may file a declaration. On a declaration so filed an i nquiry is to be made by the assessing authority for the purpose of passing an or der on arriving at a satisfaction that movement of goods has occasioned otherwi se than as a result of sale.

(ii) Whenever such an order is passed, a legal fiction is created.

49. Legal fiction, as is well known, must be given its full effect.

50. In the rules of evidence, there exist several presumptions. These presumptio ns may be rebuttable or irrebuttable. Irrebuttable presumptions are referred to as conclusive presumptions as they stand as conclusive proof of certain facts and are open to challenge only on very meagre grounds. Under the Indian Evidence Act, Sections 41,112 and 133 deal with conclusive presumptions. Even in other e nactments, like the Indian Companies Act, 1956, such provisions exist.

74. Section 6-A of the Act although provides for a burden of proof, the same has to be read in the context of Section 6 of the said Act. Section 6 provides for liability to pay tax on inter-State sales. Any transaction which does not

fall within the definition of 'sale' would not be exigible to tax, the burden whereof would evidently be on the assessee. We have noticed hereinbefore that whereas prior to the amendment in sub-section (1) of Section 6-A the dealer had an option of filing a declaration in Form F; after such amendment, he does not have such option, insofar as in terms of the amended provision, if the dealer fails and/or neglects to file such a declaration, the transaction would be deemed to be an inter-State sale. It is to be noticed that for the aforementioned purpose also, Parliament advisedly used the expression 'deemed'. If the expression 'deemed' is interpreted differently, an incongruity would ensue.

85. It has not been disputed before us that all the requisite particulars are to be stated in Form F. Once a determination is made that such statements are correct, the curtain is drawn keeping in view the expression 'thereunpon'. The said word is of great significance and must be given its full effect.

102. The particulars required to be furnished in Form F clearly manifest that the proof required is as to whether the goods were factually transferred to the assessee himself or his branch office or his agent and not to any third party. Any other enquiry is beyond the realm of the assessing authority.

106. It is further trite that an administrative authority or a quasi-judicial authority while adjudicating upon a lis is obligated to pose and answer a right question so as to enable it to arrive at a conclusion as to whether he has jurisdiction in the matter or not. By reason of a legal fiction which becomes attracted in terms of determination made thereunder, the provisions of the Central At shall stand excluded.

110. The purpose of verification of the declaration made in Form F, therefore, is as to whether the branch office acted merely as a conduit or the transaction took place independent to the agreement to sell entered into by and between the buyer and the registered office or the office of the company situated outside the State. The said decision therefore, does not run counter to our reading of the said provision. Furthermore, the question which has been raised before us had not been raised therein.

15. The question which comes up for determination in this writ proceeding is as to whether the matter has been looked into by the revisional authority in the manner and method in which the same is to be done. It is in this connection the aforesaid observations of the Apex Court in Ashok Leyland's case (supra) have been referred to. As noted above, the revisional authority in its order has not even discussed about the 'F' Forms submitted by the petitioner so as to claim that the transactions involved is not by way of sale, but only by way of transfer of stock to its commissioned agents. The grounds on which the transactions have not been granted exemption from tax have been noted above which are only speculative without any definite finding in this regard.

16. Learned counsel for the petitioner, in reference to the case of Balabhagas Hulaschand (supra), has contended that the case in hand is covered by Illustration No.II as has been furnished by the Apex Court in Paragraph-12 of the judgment. The said illustration is quoted below :-

Case No.II.- A who is a dealer in State X agrees to sell goods to B but he books the goods from State X to State Y in his own name and his agent in State Y received the goods on behalf of A. Thereafter the goods are delivered to B in State Y and if B accepts them a sale takes place. It will be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor is the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely an internal sale which takes place in State Y and falls beyond the purview of Section 3 (a) of the Central Sales Tax Act not being an inter-State sale.

17. In the case of Sahntey Steel (supra), a reference has been made to Illustration-II quoted above. Learned counsel for the petitioner has referred to these two decisions so as to emphasize that unless there is a finding that the transaction involved amounts to 'sale', the party in question cannot be burdened with tax in respect of such transaction which according to the said party, is only by way of transfer of stock and not by way of sale.

18. Learned counsel for the respondents has placed reliance on the decisions of the Apex Court in the case of Gail India Ltd. and H.B. Gandhi (supra), so as to buttress his argument that the instant proceeding being not based on pure questions of law, but being involved with disputed questions of fact cannot be decided in the writ petitions. However, this aspect of the matter has been answered above. It is the impugned revisional orders which have been called in question on ground of being perverse and vague. The limited grounds on which the impugned orders have been put to challenge can certainly be gone into exercising the power of judicial review under Article 226 of the Constitution of India. The decision in South India Viscose Ltd, has been referred to by the learned counsel for the respondents to submit that the transactions involved in this proceeding, in fact, was by way of inter-State sale. In Paragraph-8 of the said judgment, the Apex Court having regard to the kind of transaction involved in the said case and there being clear evidence of the existence of a prior contract of sale, held that the fact that the actual sale pursuant to the said contract of sale had taken place subsequently, would not militate against the transaction being treated as an inter-State sale. In the instant case, no such evidence has been discussed in the impugned order. Only certain presumptions have been drawn without even making any discussion in respect of the 'F' Forms submitted by the petitioner.

19. The decision of this Court in Eastern Agency and others (supra), has been referred to in support of the plea raised that there being alternative remedy, the writ petition is not maintainable. However, as observed above, even if there is any alternative remedy open to the petitioner, which has also seriously disputed by the learned counsel for the petitioner, in view of the finding recorded towards entertaining the writ petitions on merit having regard to the facts and circumstances involved in the case, this plea raised on behalf of the respondents need not detain us and in my considered opinion, the petitioner, at this distant date, cannot be non-suited from the writ proceeding initiating by it about 8 years back.

20. From the discussions made above and having regard to the manner in which the impugned orders have been passed, more particularly, in absence of any discussion in respect of the 'F' Forms submitted by the petitioner so as to claim that the transactions involved, in fact, was by way of transfer of stock and not by way of inter-State sale, I am of the considered opinion that the matter needs fresh adjudication by the revisional authority. Accordingly, I dispose of the writ petitions with the direction to the revisional authority to decide the revision petitions afresh upon hearing both the parties taking into account all the relevant factors and the attending facts and circumstances involved in the proceeding. Till a fresh decision is arrived at, the interim orders passed by this Court in the writ petitions will remain operative.

21. Since the revisional authority is to take a fresh decision in the matter, as a natural consequence thereof, the impugned orders dated 8.6.1997 passed by the Addl. Commissioner of Taxes, Assam, Guwahati i.e. the Respondent No.2 stand set aside and quashed. However, the interim orders passed by this Court in these writ proceedings shall continue to operate till a fresh decision is arrived at by the revisional authority.

22. Writ petitions are partly allowed. The matter shall now go back to the

revisional authority to decide the revision petitions filed by the petitioner upon a proper discussion of the matter in accordance with law about which mention has been made above.

23. Writ petitions stand disposed of leaving the parties to bear their own costs.